

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE: Modern Supply Company)
 Personal Property Account #P-124261) Knox County
 Tax Year 2005)

INITIAL DECISION AND ORDER

Statement of the Case

The subject account is presently valued as follows:

| | |
|--------------|-------------------|
| <u>VALUE</u> | <u>ASSESSMENT</u> |
| \$417,840 | \$125,352 |

The undersigned administrative judge conducted a hearing in this matter on July 12, 2006 in Knoxville, Tennessee. The taxpayer, Modern Supply Company, was represented by its chief executive officer Pace Robinson and Shirley Harris, CPA. The assessor of property was represented by staff member Mark Johnson and Byron Ellis, an auditor with Tax Management Associates.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject account consists of various assets appraised in the aggregate at \$417,840. This appeal concerns an electronic sign currently appraised at \$65,062. As will be discussed below, the taxpayer maintained that the sign constitutes real property and should be assessed to the owner of the underlying real estate.¹ Not surprisingly, the assessor asserted that subject sign should be classified as personal property and assessed to the taxpayer along with the remainder of its leasehold improvements not in dispute.

The sign at issue was erected in 2004 adjacent to I-40 at the Lovell Road exit in Knoxville, Tennessee. Mr. Robinson testified that the sign stands approximately forty feet high and consists of two components - (1) two footers and poles² and (2) an electronic fiber optic sign that displays the time and temperature along with advertising for the taxpayer's business.³ The sign is wired underground to the taxpayer's building and a thermostat. The cost to dig the footers and manufacture and install the poles was \$37,750. The cost to manufacture and install the sign was \$38,155.

¹ The assessor's records indicate that the real estate is owned by Randle Fain Robinson, et al., Trustees.

² The invoice (exhibit 3) makes reference to a single pole and footer. Unfortunately, the administrative judge was unaware of this discrepancy during the hearing and neither side introduced a photograph of the sign. However, the administrative judge's conclusions would be the same regardless of whether there is one pole and one footer or two poles and two footers.

³ According to Mr. Robinson, subject sign was purchased to advertise both the taxpayer's business and other businesses in the development.

The taxpayer contended that subject sign should be classified as real property for essentially four reasons. First, subject sign had to be engineered in accordance with local codes requirements and approved by Knox County Codes Enforcement. Second, the taxpayer has no intention of moving the sign even if it relocates its business because the sign was erected for the purpose of advertising both the taxpayer's business and other businesses in the development. Third, the taxpayer asserted it would be cost prohibitive to move the sign. In support of this position, the taxpayer introduced a letter (exhibit 1) from Ernie L. Gammon of Gammon Sign Company which provided in pertinent part that "[i]n order to remove this structure to the original site before construction it would be an enormous and expensive project. The expense would be in the tens of thousands of dollars."⁴ Fourth, signs such as the subject are treated as depreciable land improvements under the Internal Revenue Code.

The assessor contended that subject sign is properly classified as personal property for several reasons. Mr. Ellis initially noted that signs like the subject have historically been classified as personal property in Tennessee for ad valorem tax purposes. Moreover, subject sign does not serve the real estate as it is essentially utilized for advertising purposes. Finally, Mr. Ellis took issue with the taxpayer's contention that the sign cannot be moved cost effectively.

Since the taxpayer is appealing from the determination of the Knox County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

The administrative judge finds that for Tennessee property tax purposes Tenn. Code Ann. § 67-5-501 defines "personal property," "real property" and "tangible personal property" as follows:

* * *

(7) "Personal property" includes every species and character of property which is not classified as real property;

* * *

(9)(A) "Real property" includes lands, tenements, hereditaments, structures, improvements, movable property assessable under § 67-5-802, or machinery and equipment affixed to realty, except as otherwise provided for in this section, and all rights thereto and interests therein, equitable as well as legal;

⁴ Gammon sign company installed subject sign.

* * *

(12) "Tangible personal property" includes personal property such as goods, chattels, and other articles of value which are capable of manual or physical possession, and certain machinery and equipment, separate and apart from any real property, and the value of which is intrinsic to the article itself.

The administrative judge finds that State Board of Equalization Rule 0600-5-.09(1) specifically addresses the issue of whether property should be classified as real or personal as follows:

In determining whether property should be assessed as real or personal, the following factors should be considered;

- (a) The apparent movability or permanency of the item in its location or attachment to the land or structure. The cost of moving the item and the amount of damage that will be incurred to the item, the land, or the improvement that is being considered. If the value of the item exceeds the moving cost and the amount of damage incurred, it is more likely to be considered personal property.
- (b) The primary purpose which the item serves. This factor would most generally concern an item that forms a part, or segment, of a series of functions in a manufacturing and/or processing system. If the item is more or less special purpose in nature and its practical use would not enhance the total property if the present or a similar manufacturing processing system were not there, it is more likely to be considered personal property.
- (c) The stated intent of the owner. This element will come into focus most frequently where leased premises are involved, although it must occasionally be considered where premises are owner-occupied. If the intent of the owner is to move the item upon relocation of the business, the item is more likely to be considered personal property, provided that such a move would be probable, practical, and cost-effective.

Respectfully, the administrative judge finds that the preponderance of the evidence supports classifying subject sign as tangible personal property. The administrative judge finds that the sign is essentially an advertising device that in no way serves the real estate. The administrative judge finds Mr. Robinson conceded that the electronic component of the sign is portable. The administrative judge finds that the footers are a necessary and integral part of the sign that have no utility or value standing alone. Moreover, it appears from the limited evidence in the record that the sign could be removed with minimal damage to either the land or the sign itself.

The administrative judge finds the taxpayer introduced insufficient evidence to establish that it would be cost prohibitive to remove the sign. The administrative judge finds that the letter from Mr. Gammon (exhibit 1) initially lacks probative value because he was not present to testify or undergo cross-examination. See *TRW Koyo* (Monroe Co., Tax Years 1992-1994) wherein the Assessment Appeals Commission ruled in pertinent part as follows:

The taxpayer's representative offered into evidence an appraisal of the subject property prepared by Hop Bailey Co. Because the person who prepared the appraisal was not present to testify and be subject to cross-examination, the appraisal was marked as an exhibit for identification purposes only. . . .

* * *

. . . The commission also finds that because the person who prepared the written appraisal was not present to testify and be subject to cross-examination, the written report cannot be considered for evidentiary purposes. . . .

Final Decision and Order at 2. Furthermore, it is unclear what it would actually cost to remove the sign. The administrative judge finds that the term "tens of thousands of dollars" encompasses a wide range. Given an original total cost of \$75,905, it appears that even at a cost of "tens of thousands of dollars" it could be cost effective to relocate the sign if one chose to do so.

The administrative judge would also note that the lease between the taxpayer and owner of the real estate was not introduced into evidence. The administrative judge finds it appropriate to observe that such leases often require the lessee to remove improvements like the subject sign at the conclusion of the lease. Indeed, it appears subject sign constitutes a "trade fixture" and must therefore be considered personal property. The administrative judge finds that one authoritative text discusses this issue in pertinent part as follows:

Although fixtures are classified as real estate, trade fixtures are not. A *trade fixture*, also called a *chattel fixture*, is an article owned and attached by a tenant to a rented space or built for use in conducting a business. Therefore, trade fixtures are not considered to be real estate and are not endowed with the rights of real property.

American Society of Appraisers, *Appraising Machinery and Equipment* (1989) at 11.

Ironically, the administrative judge finds that most taxpayers benefit by having signs assessed as personal property because of the lower assessment level (30% vs. 40%). The administrative judge finds Mr. Robinson candidly admitted that his motivation is bringing this appeal was to minimize his business expenses by shifting the tax payment to the owner of the underlying real estate.

The administrative judge finds the fact subject sign was engineered in accordance with local codes requirements irrelevant. Indeed, Mr. Robinson testified that several other signs owned by the taxpayer are properly classified as personal property despite being similarly engineered.

The administrative judge finds that the Internal Revenue Code often differs from Tennessee law in its classification and depreciation of various assets. The administrative judge finds that Tennessee law governs whether a particular property should be classified as real or personal.

ORDER

It is therefore ORDERED that subject sign be classified as personal property and the following value and assessment remain in effect for tax year 2005:

| <u>VALUE</u> | <u>ASSESSMENT</u> |
|--------------|-------------------|
| \$417,840 | \$125,352 |


It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 27th day of July, 2006.



MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Shirley Harris, CPA
Mr. Byron Ellis
Mr. Pace Robinson
Mr. Mark Johnson
John R. Whitehead, Assessor of Property